

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
HERNANDEZ, et. al.

Plaintiffs,

- against -

J.C. PENNEY COMPANY, INC.,

Defendant.
-----X

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: 4/21/2020

18 Civ. 5759 (RWL)

ORDER

ROBERT W. LEHRBURGER, UNITED STATES MAGISTRATE JUDGE.

On February 25, 2020, this Court preliminarily approved the Settlement Agreement reached between the parties. (Dkt. 64.) By order dated March 25, 2020, the Court extended the deadlines in the Settlement Agreement to April 24, 2020. (Dkt. 68.) One of those deadlines is for Defendant to fund the settlement. By letter dated April 16, 2020, Defendant requested an additional extension until June 4, 2020. Plaintiff opposes, particularly given concerns based on public information about Defendant's financial condition. A second issue, upon which the parties agree, concerns the method of notice to class members for whom email addresses are not known. On April 21, 2020, the Court held a telephonic conference to discuss both issues. After due consideration, the Court orders as follows.

1. Defendant shall comply with its agreed-upon obligation to fund the settlement no later than April 30, 2020. Defendant has not represented that it does not have the funds or means to make the requisite payment. Despite multiple opportunities to do so, Defendant has not provided any concrete reason as to why funding should be delayed any further. Accordingly, Defendant shall wire the full amount due

under the Settlement Agreement into escrow of the Settlement Administrator no later than April 28, 2020.

2. For all class members for whom email addresses are not known, notice shall be provided by text as follows. Although unsolicited messaging was the subject of the underlying action, there is no reasonable, cost-effective alternative for contacting this group of class members about the proposed settlement. The notice shall read:

“This is a Court-ordered notice from the Southern District of New York regarding the case Hernandez v. J.C. Penney Company, Inc., SDNY Docket No. 18-cv-5759. A class settlement has been negotiated that may affect your rights. To learn more about this proposed settlement, please reply to this text message with your email address, and a more detailed notice will be emailed to you. This is not spam. If you have any questions, please contact the administrator of this class settlement at [TEL NUMBER]. Thank you.”

SO ORDERED.



ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Dated: April 21, 2020
New York, New York